

SPC compub  
10/5/06

SM 616-06 Myers, Robert  
VAR 06-1824

MSA.S.1829-6027

Robert L. Ehrlich, Jr.  
*Governor*

Michael S. Steele  
*Lt. Governor*



Martin G. Madden  
*Chairman*

Ren Serey  
*Executive Director*

**STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401  
(410) 260-3460 Fax: (410) 974-5338  
[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

October 5, 2006

Staci Merriman, St. Mary's County  
Department of Land Use and Growth Management  
23150 Leonard Hall Drive, PO Box 653  
Leonardtown, MD 20650-0653

**RE: SM 616-06 Robert Myers  
Local Case # 06-1824 24245 Windy Court**

Dear Ms. Merriman:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to impact the expanded Buffer to construct a house, driveway and garage. The parcel is .90 acres or 39,204 square feet, located in the LDA and is currently unimproved.

Provided that this lot is properly grandfathered we do not oppose this variance. The 100-foot Buffer has been expanded for highly erodible soils and as a result it appears that the parcel is severely constrained by the expansion of the Buffer. In addition, it appears that the applicant has minimized impacts to the expanded Buffer. If this variance is granted we recommend mitigation in accordance with the St. Mary's County Zoning Ordinance, Article 7, Chapter 72 and that all areas disturbed during construction be replanted with native vegetation.

Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please contact me at 410-260-3481.

Sincerely,

A handwritten signature in black ink, appearing to read "J. B. Lester", with a long horizontal line extending to the right.

Jennifer B. Lester  
Natural Resources Planner

**ST. MARY'S COUNTY GOVERNMENT  
DEPARTMENT OF LAND USE  
AND GROWTH MANAGEMENT**

*Denis D. Canavan, Director*

*Phillip J. Shire, Deputy Director*



SM 0616-06

Francis Jack Russell, President  
Kenneth R. Dement, Commissioner  
Lawrence D. Jarboe, Commissioner  
Thomas A. Mattingly, Sr., Commissioner  
Daniel H. Raley, Commissioner

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**MEMORANDUM**

DATE: July 25, 2008

TO: Denis Canavan, Director

FROM: Jenn Ballard, Environmental Planner  
Yvonne Chaillet, Zoning Administrator

SUBJECT: AD VAAP # 06-1824, Myers  
Administrative Hearing of July 24, 2008  
Supplemental Report

**I. DEVELOPMENT DATA**

**REQUEST:** Variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to disturb the expanded Critical Area Buffer to add impervious surface in the Critical Area Buffer and to clear in the Critical Area Buffer

**OWNER:** Robert and Kimberly Myers (The "Applicants")

**LOCATION:** 24245 Windy Court, Hollywood, Maryland

**TAX MAP:** 27                      **ELECTION DISTRICT:** 6<sup>th</sup> district

**BLOCK:** 22                      **ACREAGE:** 1.20 acres

**PARCEL:** 791                      **USE:** Residential

**ZONING:** Residential Neighborhood Conservation District (RNC), Limited Development Area (LDA) Overlay, Airport Environs (AE) Overlay.

**II. NOTIFICATION:** The property and variance request were advertised in *The Enterprise* on July 9, 2008 and July 16, 2008.

**III. APPLICABLE REGULATIONS**

**St. Mary's County Comprehensive Zoning Ordinance (Ordinance)**

1. Section 20.4 Director of Planning and Zoning. Powers and Duties.
2. Section 24.4 Specific Standards for Granting Variances in the Critical Area.
3. Section 71.8.3 The 100-Foot Critical Area Buffer

**RECEIVED**

AUG 13 2008

#### IV. STAFF COMMENTS:

1. The Applicants obtained Administrative Variance approval on November 22, 2006 and subsequently obtained a building permit. However, the permit and variance expired before the Applicants could initiate construction. This variance request is for the same relief as the 2006 request.
2. The subject property (Property) is a grandfathered lot because it was recorded as part of Scotch Point Subdivision prior to the adoption of the Maryland Critical Area regulations on December 1, 1985. The Property is located on Mill Creek and is constrained by steep slopes and highly erodible soils (Evesboro-Westphalia Complex) and hydric soils (Tidal Marsh), resulting in the expansion of the Critical Area Buffer (Buffer). The property contains 13,094 square feet of tidal marsh, resulting in 39,178 square feet of fastland (lot area minus tidal wetlands) on the Property. Only a small portion of the Property near the cul-de-sac is outside the expanded Buffer.
3. The Applicants are seeking relief from Section 71.8.3 of the Ordinance to construct a two-story single-family dwelling, garage, driveway and septic system. The Property is currently unimproved and will be served by a private well and septic system. The proposed footprint of the house is 2,497 square feet. The amount of newly created lot coverage after construction will be 4,198 square feet or 10.7 percent of the Property. The allowed amount of lot coverage on a lot of this size is 5,878 square feet or 15 percent of the Property's fastland.
4. The existing vegetative coverage on the Property is 28,208 square feet or 72 percent of the Property. The Applicants are proposing to clear 800 square feet of vegetation outside the Buffer and 4,357 square feet of vegetation in the Buffer for a total of 5,157 square feet of clearing or 18.3 percent of the existing vegetation on the Property.
5. This site plan has been reviewed and was approved on May 7<sup>th</sup>, 2008 by the Health Department and the Soil Conservation District has approved an erosion and sediment control plan. The Maryland Critical Area Commission does not oppose the variance request from Section 71.8.3 of the Ordinance and recommends that the Applicants mitigate three-to-one (3:1) per square foot of the variance granted in accordance with Section 24.4.2.b of the Ordinance, and that all areas disturbed during construction be replanted with native vegetation.
6. Attachment #1 is the Applicants' Letter of Intent addressing the standards for granting a variance in the Critical Area. Staff's analysis of the standards for granting a variance in the Critical Area are provided below:
  - a. *That special conditions or circumstances exist that are peculiar to the land or structure involved and that strict enforcement of the Critical Area provisions of this Ordinance would result in unwarranted hardship.*

Staff Analysis: The Property is a grandfathered lot and is constrained by the Critical Area Buffer, expanded for tidal wetlands, highly erodible soils and steep slopes at the shoreline of Mill Creek.

For these reasons, staff finds that special conditions exist on the Property and that a strict enforcement of the Critical Area provisions of the Ordinance would result in unwarranted hardship by depriving the Applicant of the ability to develop the Property for residential use.

- b. That strict interpretation of the Critical Area provisions of this Ordinance will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of St. Mary's County.*

Staff Analysis: Other property owners in the LDA who are constrained by the expanded Buffer have been granted variances in the past to construct single-family dwellings and appurtenances in order to have use of their residential properties. A strict interpretation of the Ordinance would prohibit the proposed development in the Buffer, thereby, depriving the Applicant of rights commonly enjoyed by other property owners.

For these reasons, staff finds that strict interpretation of the Critical Area provisions of this Ordinance will deprive the Applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area

- c. The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Critical Area provisions of this Ordinance to other lands or structures with the Critical Area of St. Mary's County.*

Staff Analysis: Any property owner with a legally recorded grandfathered lot that is constrained by topographical conditions and the Critical Area provisions of the Ordinance has the opportunity to file for a variance and seek relief from the regulations. Other property owners in the LDA have been granted variances and have been issued permits to build dwellings in the Buffer as long as maximum conformance to Critical Area regulations is attempted.

For these reasons, staff finds that the granting of the variance will not confer any special privileges upon the Applicant.

- d. The variance request is not based upon conditions or circumstances that are the result of actions by the applicant.*

Staff Analysis: The adoption of the County's Critical Area program after the recordation of the lot, which prohibits development in the Buffer, created the need for the variance because a Buffer is now required from sensitive areas.

For this reason, staff finds that the variance request is not based upon conditions or circumstances that are the result of actions by the landowner.

- e. *The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of a variance will be in harmony with the general spirit and intent of the Critical Area program.*

Staff Analysis: The Applicants must mitigate for disturbance in the expanded Buffer in addition to mitigating for clearing outside the Buffer. A Critical Area Planting Agreement and Buffer Management Plan are necessary to mitigate any adverse impacts to water quality and habitat. Mitigation is required at a ratio of three to one (3:1) per square foot of the variance granted, and the required plantings will maintain the functions of the Buffer and will improve plant diversity and habitat value for the site. The plantings will also improve the runoff characteristics for the Property, which will contribute to improved infiltration and reduction of non-point source pollution leaving the site.

For these reasons, staff finds that the granting of a variance to add lot coverage in the Buffer and to clear in the Buffer will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area Buffer, and that the granting of a variance will be in harmony with the general spirit and intent of the Critical Area program.

- f. *The variance is the minimum necessary to achieve a reasonable use of the land or structures.*

Staff Analysis: The proposed house is reasonably sized and the Applicants have minimized the impacts to the expanded Buffer by placing the house as close as possible to Windy Court while maintaining the 25-foot front building restriction line. The septic system and drain fields will be located behind the house and as close to the house and property line as possible while meeting the 25-foot setback from the drainage easement, which runs parallel to the eastern Property boundary, and the 50-foot setback from the well on the adjacent property. The proposed dwelling is located 13 feet from the Property line, though 10 feet is the minimum setback from the Property line, in order to preserve the mature trees that are located along the Property line.

For these reasons staff finds that the variance is the minimum necessary to achieve a reasonable use of the land.

- V. STAFF RECOMMENDATION:** Having found that the standards for granting a variance in the Critical Area have been met and that the Maryland Critical Area Commission does not oppose this variance, staff recommends approval of the request to add impervious surface in the expanded Critical Area Buffer and to clear in the Buffer to construct a single-family dwelling and appurtenances, subject to the following condition: The Applicants shall comply with the Critical Area Planting Agreement and Buffer Management Plan that requires mitigation at a ratio of three-to-one (3:1) per square foot of the variance granted in the Critical Area.

**VI. CONCLUSION:** The public hearing was held as advertised and was attended by Mr. and Mrs. Robert Myers. Certified mail receipts were submitted and Mr. Myers presented the variance request. Staff did not receive comments, written or verbal, from any interested parties.

Approval by condition  
Decision

August 8, 2008  
Date

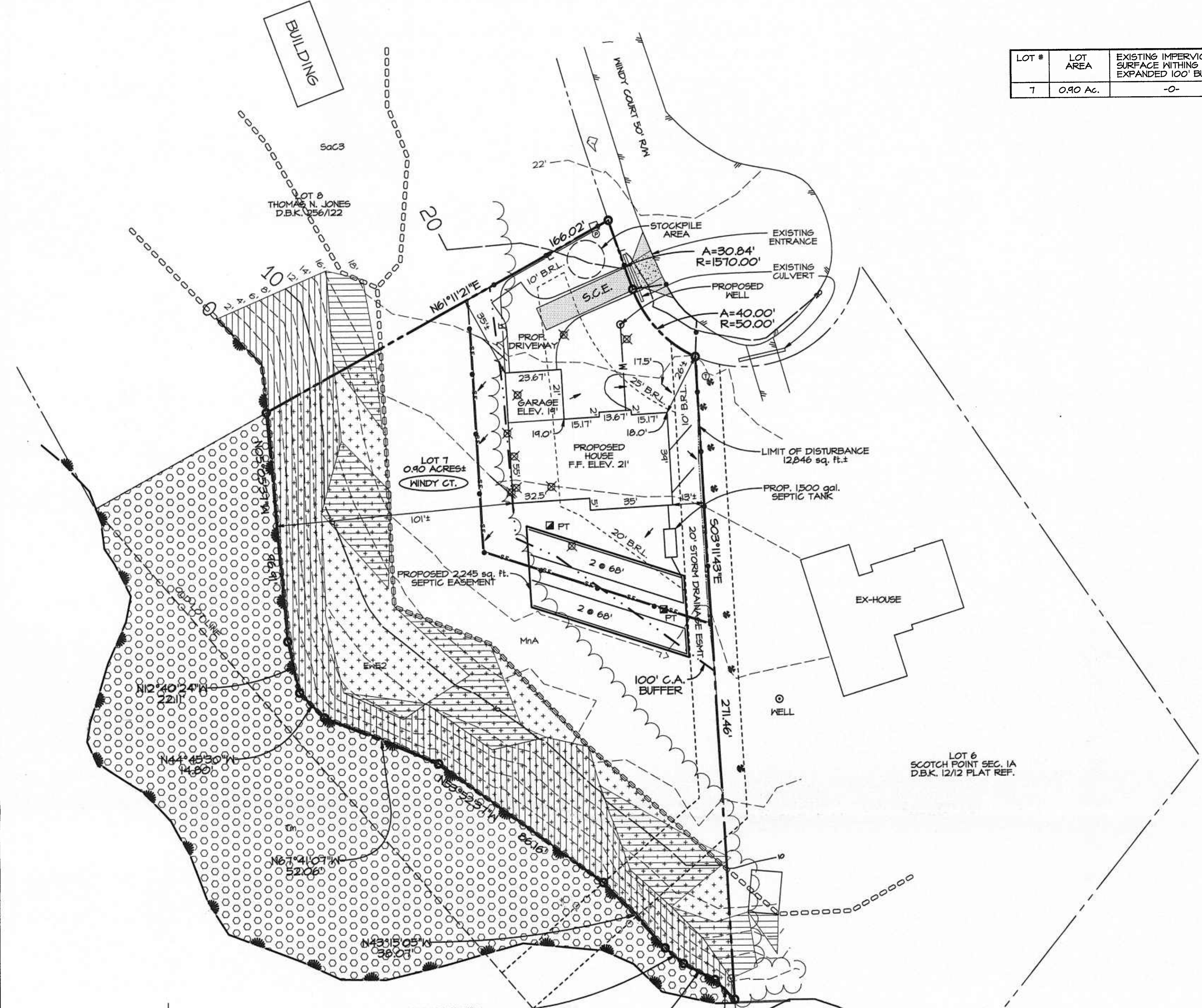
Denis Canavan  
Denis Canavan, Director

**VII. ATTACHMENTS:**

- Attachment #1- Letter of Intent
- Attachment #2- Critical Area Comments
- Attachment #3- Critical Area Planting Agreement
- Attachment #4- Location Map
- Attachment #5- Site Plan
- Attachment #6- GIS Map of Property

Variance Application Date: June 17, 2008 (re-application)



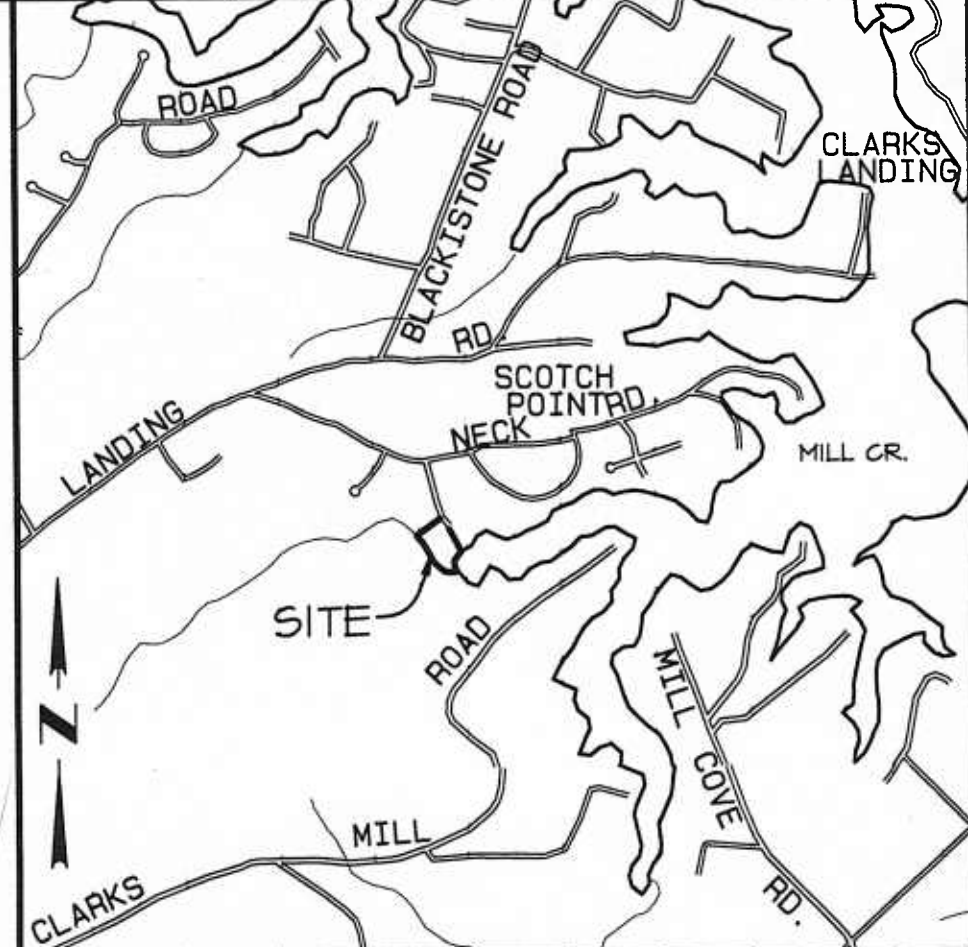


### CRITICAL AREA - EXISTING CONDITIONS TABLE

LOT #	LOT AREA	EXISTING IMPERVIOUS SURFACE WITHIN THE EXPANDED 100' BUFFER	SLOPES 15% OR GREATER	EXISTING FOREST	EXISTING IMPERVIOUS SURFACE OUT OF THE EXPANDED 100' BUFFER	AREA WITHIN CRITICAL AREA	AREA OUT OF CRITICAL AREA	IMPERVIOUS SURFACE ALLOWED AT 15%
7	0.90 AC.	-0-	11,027 s.f.	0.648 AC.	-0-	0.90 AC.	-0-	5,876 s.f.

### LEGEND

○	PROPERTY LINE	=====	HIGHLY ERODIBLE SOIL TYPES
---	PROPERTY LINE ALONGING INCREASE/DECREASE EASMT.	=====	HYDRIC SOIL TYPES
---	FESC. TEST	=====	NON-TIDAL WETLANDS
---	NON-TIDAL WETLANDS	=====	10 YEAR FLOODPLAIN
---	10 YEAR FLOODPLAIN	=====	50' FLOODPLAIN BUFFER
---	50' FLOODPLAIN BUFFER	=====	INTERMITTENT STREAM
---	INTERMITTENT STREAM	=====	50' STREAM BUFFER
---	50' STREAM BUFFER	=====	PROPOSED S.R.A.
---	PROPOSED S.R.A.	=====	SOILS TYPE DIVISION LINE
---	SOILS TYPE DIVISION LINE	=====	LIMIT OF EXISTING FOREST
---	LIMIT OF EXISTING FOREST	=====	5' CONTOUR (COUNTY)
---	5' CONTOUR (COUNTY)	=====	2' CONTOUR (FIELD RUN)
---	2' CONTOUR (FIELD RUN)	=====	10' CONTOUR (FIELD RUN)
---	10' CONTOUR (FIELD RUN)	=====	SILT FENCE
---	SILT FENCE	=====	LIMIT OF DISTURBANCE
---	LIMIT OF DISTURBANCE	=====	TREES TO BE REMOVED



### VICINITY MAP

SCALE: 1" = 2000'

### SOIL CONSERVATION GENERAL NOTES

- The Contractor shall notify M.D.E. Environment Division at telephone number 410-537-5510 at least 48 hours prior to commencing clearing or grading activities. The Contractor may mail Notice to M.D.E. Sediment and Stormwater Administration, 1800 Washington Blvd, Suite 440, Baltimore, MD 21202-1005.
- Approval of the Inspection Agency shall be requested upon completion for installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance or grading.
- Approval shall be requested upon final stabilization of all sites before removal of sediment controls.
- Specifications for erosion control practices shall be the "1994 MARYLAND STANDARDS AND SPECIFICATIONS FOR EROSION AND SEDIMENT CONTROL" by the Maryland Department of the Environment.
- Site is exempt from Forest Conservation Requirements per Section 15.2.2h of the St. Mary's County Comprehensive Zoning Ordinance (CZO) 02-01 (disturbance of less than 40,000 square feet of forested area).
- Gravel/landfill Site is exempt from Stormwater Management Requirements.

### TEMPORARY & PERMANENT STABILIZATION

- Following initial soil disturbance or redistribution, permanent or temporary stabilization shall be completed within:
  - Seven (7) calendar days for all perimeter controls, dikes, swales, ditches, perimeter slopes and all slopes greater than 3 horizontal to 1 vertical (3H:1V) and
  - Fourteen (14) days as to all disturbed or graded areas in the project site.
- Temporary Seeding Schedule:

Species*	Minimum Seeding Rates lbs/acre	Planting Depth (in)	2 1/2- 4/30	5 1/2- 8/15	6 1/2- 11/30
Barley	122	2.80	1/4-1/2	X	- by 10/15
Oats	46	3.22	1/4-1/2	X	- X
Rye	140	3.22	1/4-1/2	X	- X
Barley/Rye + Fescue Millet	150	3.45	1/4-1/2	X	X

- 10-10-10 fertilizer shall be applied at 600 lbs per acre. \*  
Lime shall be applied at 2 tons per acre or 100 lbs/1,000 SF. \*
- Permanent Seeding Schedule:

Species*	Minimum Seeding Rates lbs/acre	Planting Depth (in)	Recommended application dates
Tall fescue 15%			03/01 - 05/15
Canada bluegrass 10%			03/15 - 11/15
KY bluegrass 10%			
Red top 5%	150	3.40	1/4-1/2
Keeping lovegrass 17%	4	0.04	1/4-1/2
Serotia lespedeza 83%	20	0.46	03/01 - 05/15 05/16 - 08/14

Fertilizer application rate: 10-20-20, N 40 lbs/ac or 2.0 lbs/1,000 SF. \*  
P205 115 lbs/ac or 4.0 lbs/1,000 SF. \*  
K2O 115 lbs/ac or 4.0 lbs/1,000 SF. \*  
Lime application rate: 2 tons/ac. or 100 lbs/1,000 SF. \*

\* Other mixes may be used as recommended by the Soil Conservation Service.  
\*\* Soil preparation shall comply with Section 6.20.0 & 6.21.0 of the "1994 MD STANDARDS AND SPECIFICATIONS FOR EROSION AND SEDIMENT CONTROL."

### SEQUENCE OF CONSTRUCTION

- Contractor shall arrange a Pre-Construction Meeting with the St. Mary's Soil Conservation District (301-475-8402) prior to the disturbance of any land on site. 1 to 2 days
- Clear and grub those areas necessary for the installation of the perimeter control devices. Install perimeter control devices concurrently with clearing and grubbing. 1 to 2 days
- Request approval of perimeter control devices by inspecting authority prior to other land disturbance or grading. 2 days +/-
- Clear, grub and rough grade the remainder of the site. 2 to 3 days
- Construct house and appurtenances. 3 to 6 months
- Final grading, landscaping & permanent stabilization of site. 1 to 2 days
- Remove sediment control devices upon inspector's approval. 2 days +/-

### CONSULTANT'S CERTIFICATION

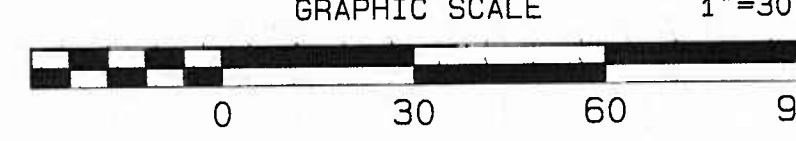
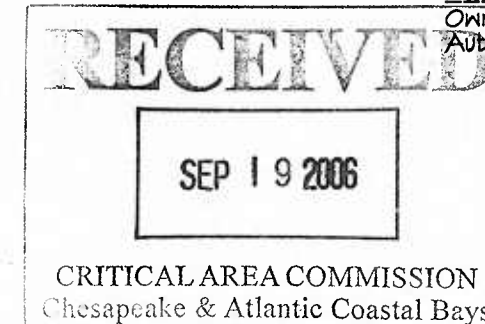
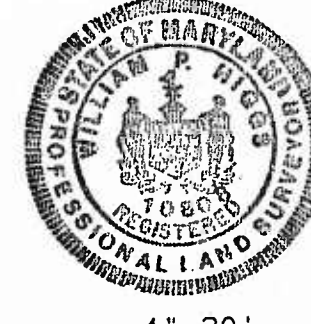
I hereby certify that, to the best of my knowledge and belief, these plans have been prepared in accordance with approved erosion and sediment control ordinances, regulations, standards and criteria.

*William P. Higgs* 5-23-06  
William P. Higgs, MD #10808  
Prof. Land Surveyor, MD #10808

### OWNER'S/DEVELOPER'S CERTIFICATION

Any clearing, grading, construction or development, or all of these, will be done pursuant to this plan, and that all responsible personnel involved in the construction project will have a "Certificate of Training" from a Maryland Department of the Environment approved training program before beginning the Project.

Owner/Developer  
Authorized Representative  
Date

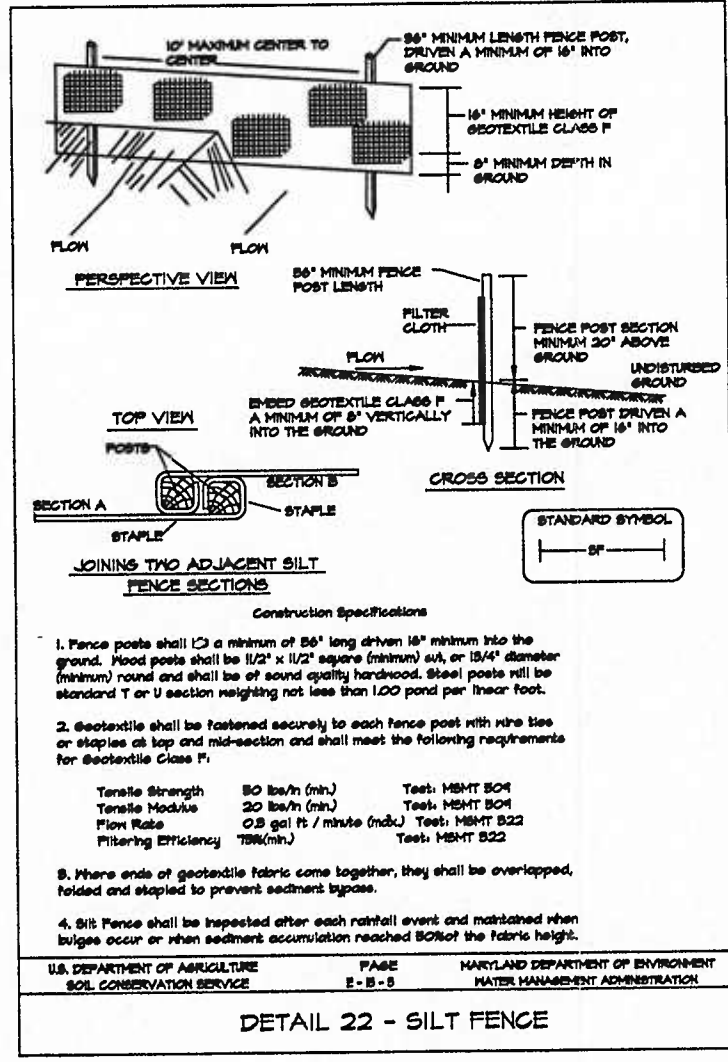
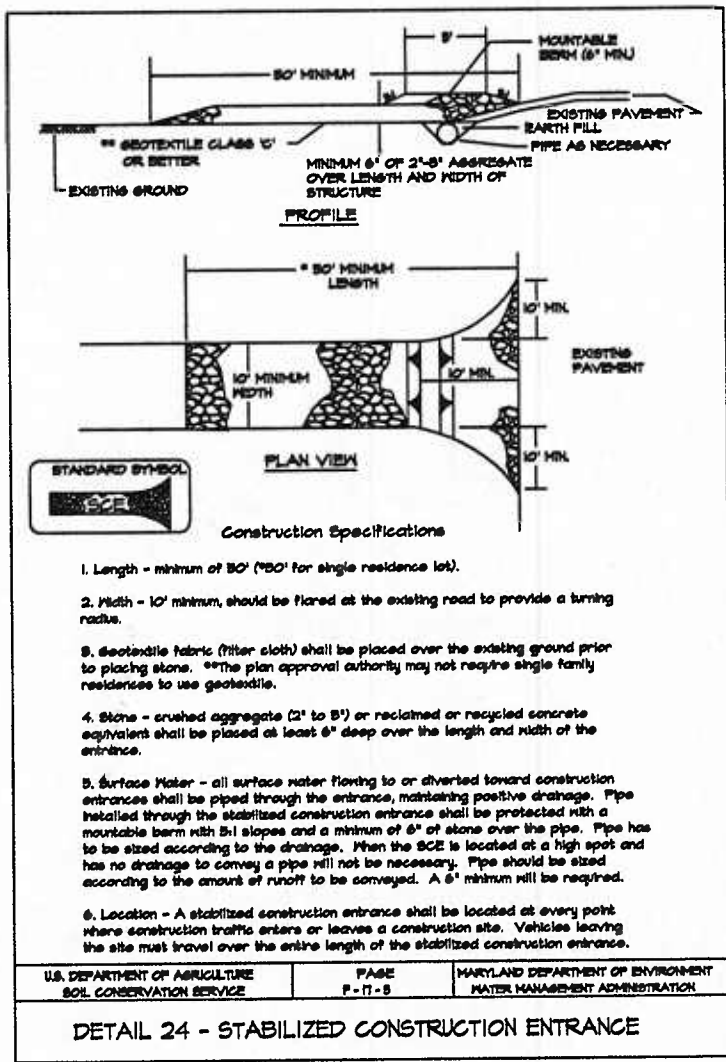


### GENERAL NOTES

- Subject lot is to be served by an individual septic well drilled to an approved confined aquifer and an individual septic system for sewage disposal.
- Unless otherwise shown hereon, there are no proposed or existing wells or sewerage systems within 100' of the proposed well and sewerage systems.
- This lot is in compliance with the St. Mary's County Comprehensive Water and Sewerage Plan.
- This Health Department approval certifies that the above lot is in conformance with pertinent Health Department laws and regulations as of the approval date. However, this approval is subject to changes in such laws and regulations. Changes in topography or site designations may void this approval. This designated per area is the only per area approved by the St. Mary's County Health Department for sewage disposal purposes. The approved lot includes an approved area of 2,245 square feet for sewage disposal purposes as required by current Maryland State Health Department Law. Improvements of any nature including, but not limited to, the installation of other utility lines in the area may render the lot undevelopable. To determine the exact area of the lot approved for such purposes, you should contact The St. Mary's County Health Department, Office of Environmental Health. Septic system design based upon a three bedroom proposed house. Includes per test.
- This lot contains an area of at least 20,000 square feet, not including Rights-of-Way (existing or proposed) 50 year flood plains, and grades of 25% or greater.
- This plan was prepared without the benefit of a Title Report which may show additional conveyances, easements, covenants, rights-of-way or building restriction lines not shown hereon.
- Unless otherwise shown, property lines, topography and perc tests were taken from deeds and plats of record and do not represent a survey by this firm.
- Subject property will be graded so as to drain surface water away from foundation walls. The grade away from foundation walls will fall a minimum of six inches (6") within the first ten feet (10').
- Contours and spot shots shown hereon are referenced to an assumed datum/NGVD29/NAVD80.
- This parcel of land is shown on Tax Map 21, Block 22, P/O Parcel 191.
- Vertical Datum shown hereon is assumed.

### CRITICAL AREA CALCULATIONS

LOT AREA	34,178 s.f. = 0.78 AC.
IMPERVIOUS ALLOWED @ 15%	5,876 s.f. = 0.135 AC.
PROPOSED IMPERVIOUS:	
HOUSE	2,457 s.f.
DRIVE	1,204 s.f.
GARAGE	447 s.f.
TOTAL PROPOSED IMPERVIOUS:	4,108 s.f. = 0.096 AC. = 10.7 %
TOTAL WOODS	28,208 s.f. = 0.65 AC. = 72 %
PROPOSED CLEARING	4,761 s.f. = 0.109 AC. = 16.9 %



ST. MARY'S SOIL CONSERVATION DISTRICT APPROVED _____ 20____	
ATTEST Reviewed for St. Mary's S.C.D. and meets Technical Requirements	
Signature _____ U. S. Soil Conservation Service	Date _____ SANITARIAN _____ DATE _____ ENVIRONMENTAL HEALTH DIRECTOR _____ DATE _____

<b>LSR</b> LITTLE SILENCES REST, INC.	
41650 COURT HOUSE DRIVE - SUITE 101 - P.O. BOX 2340 LEONARDTOWN, MD 20650 PHONE: (301) 475-2236 - FAX: (301) 475-3720	

DATE 4/4/06	<b>C.A. BUILDING PERMIT PLAT AND E. S. C. PLAN, LOT 7, SECTION I-A SCOTCH POINT PER PLAT D.B.K. 12/12 SIXTH ELECTION DISTRICT ST. MARY'S COUNTY, MARYLAND FOR: ROBERT W. MYERS</b>
JOB# 0003-06	
SCALE 1" = 30'	
CHECKED JEFF	
REVISIONS 3/23/06 PER CLIENT	
ZONING NUMBER: 06 - 0000 HD. FILE # 145-26	